

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3046 of 1986****For Approval and Signature:****HONOURABLE MR.JUSTICE KSHITIJ R.VYAS****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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ARJAN LADHABHAI RATHOD & 6 - Petitioner(s)

Versus

AMARSINH CHAUDHARI CHIEF MINISTER & 19 - Respondent(s)

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Appearance :

PARTY-IN-PERSON for Petitioner(s) : 1 - 7.
MR PR ABICHANDANI Ld. AGP for Respondent(s) : 1 - 8.
MR PM THAKKAR for Respondent(s) : 9 - 20.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 15/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Petitioner no. 1 - Arjanbhai Ladhambhai Rathod is

President of Dai-Minsar Sankat Nivaran Satyagrah Committee. Petitioners no. 2 to 7 are members of the said committee. They have approached this court by filing this petition which is claimed to be a Public Interest Litigation complaining about the poor workmanship of the dam known as Dai-Minsar (hereinafter referred to as 'the Dam' for short) and for expressing their fear that in future the dam may give way, resulting into grave calamity. It is the say of the petitioners that they are the residents of villages situated on the down stream of the Dam. It is their say that time and again it has been brought to the notice of the concerned department regarding the extensive burst and leakage caused in the Dam on account of its poor workmanship. However, no steps have been taken to repair it. It is also averred that the construction of the Dam was started sometime in the month of November - December, 1980 and even at that time, it was brought to the notice of all concerned that the contractor to whom the work of construction was entrusted was not carrying out the work in accordance with the specifications provided to him. It is also the say of the petitioners that during the earthquake of year 2001 extensive damage was caused to the Dam but the Irrigation Department has completely ignored it and till this date

no repairs have been carried out. On account of the same, there is every possibility of disaster occurring any time. The petitioners have also alleged malafide against certain politicians and the contractor stating that they have vested interest in the project. On the basis of the aforesaid facts, it is prayed that a commission/agency be appointed to make independent investigation in the matter and to direct the concerned authority to take suitable steps to follow the recommendations of Central Water Commission, immediately. It is further prayed that the authorities be directed to take adequate measures to increase the strength of the dam and to take proper steps to ensure safety of the people living down stream.

2. Shri Arjan Ladha Rathod, petitioner no. 1 appeared before us as party-in-person. After arguing the matter for some time, he left the court obviously in anger since the court confronted him with certain queries on factual aspects. While leaving the court, he shouted and told the court that it could do whatever it thought fit, God is there to save them. However, Mr. PR Abichandani ld. AGP has taken us through the record of this petition and has specifically drawn out attention to the relevant documents. He has submitted that the

Dam has been built in accordance with the specifications. Even at the time of construction of the Dam, regular inspection was carried by various agencies. He has further submitted that today also regular inspection is being made by the concerned engineers of the Irrigation Department. According to him, the Dam is safe and sound and the apprehension of the petitioner is not well founded.

3. He has, therefore, prayed that the petition be dismissed.

4. Before we discuss the merits of the petition, it is pertinent to know that this very committee had approached this court through petitioner no. 1 and other by filing SCA No. 9377/1997. In the said petition, it was contended that the entire project of the Dam was unnecessary and unprudent. It was contended that the Dam was essentially meant for providing drinking water to the villagers but during the summer season it completely gets dried up leaving the people without water. It was also contended that drinking water could be drawn from other Dams. It was their say that Rs. 562 lacks was unnecessarily being spent on this project. According to them, it was sheer waste of time and public money. In the course of hearing of the

said petition, it was also agitated before the court that apart from the fact that the project was not viable and the construction of the dam itself was of very poor quality and disaster was likely to occur anytime. The said petition was dismissed by the Division Bench of this Court by its CAV Order dated 1.9.1998 and it had imposed costs of Rs. 2000/- on the petitioners.

5. Against the said order, the petitioners had approached the Apex Court by filing petition for Special Leave to Appeal being SLP (Civil) No. 20029/1998. The Apex Court passed order as follows:

"We have seen the affidavits which have been filed. We do not see any reason to intervene. However, the State Government shall periodically inspect the Dam in question and file a report relating to the condition of the Dam and its safety. Such report shall be filed once a year before the Gujarat High Court in the disposal of special Civil Application No. 9377 of 1997 and the same may be placed by the Hon'ble the Chief Justice of the Gujarat High Court before an appropriate Bench for directions, if any. Such reports to be filed for a period of three years.

The direction given in the impugned judgment against the petitioner-in-person for payment of costs of Rs. 2000/- is, however, deleted.

6.The aforesaid order of the Apex Court clearly shows that even before the Apex Court, the issue regarding poor construction of the Dam and its resultant effect was argued along with other contentions. The Apex Court while rejecting the SLP gave directions to the State Government to make yearly inspection of the Dam for 3 years and to place the said report in the disposed of petition before this court. This issue i.e. poor quality of construction itself, therefore, stands finally concluded. The present petition which is however prior in point of time also became virtually infructuous with the aforesaid order of the Apex Court but the petitioners have chosen to re-agitate the said issue at the time of hearing.

7.Since this being Public Interest Litigation and submissions with regard to post earthquake state of dam, we have also examined, as stated above, the record of this petition and given our detailed consideration on this issue. Before leaving the court, it was submitted by petitioner no. 1 that there is extensive burst and leakage in the Dam. He has also submitted

that after the earthquake of 2001, the condition of the Dam has worsen, posing grave danger to the people residing down stream of the Dam. Here, when we tried to impress upon him that the issue which he was agitating before us now, had been finally decided by the Apex Court but he was not prepared to appreciate it and kept on raising irrelevant contentions. According to him, the earlier petition was for different purpose and it was not aimed at the poor quality of the construction of the Dam. As stated above, he thereafter left the court. The record however shows that the Dam is being inspected regularly by the concerned authority and the technical experts. Even at the time of its construction, on 21.10.1983 Mr. Z. Hasan, Director ERDD-2 and Mr. S.M. Sood of C.S.M.R.S. Inspected the dam and submitted the report to the Government of India and the Government through Central Water Commission recommended certain action to be taken by the Government of Gujarat in execution and construction of the project. Those instructions were scrupulously followed. It also appears that all through out the construction, there was continuous supervision of Government supervisory staff and for checking the quality control of the work, one separate Sub-Division

was functioning directly under the technical control of Superintending Engineer, Rajkot. The record shows that some people living in village Sagpar which is situated the down stream of the Dam continuously complained about the construction of the Dam by writing letters, making applications etc. and every time pursuant to their request inspection was carried out by higher officers from time to time. The affidavit filed by Mr. Manish Kantilal Dixit, Superintending Engineer, Rajkot Irrigation Circle, Rajkot, shows that pursuant to complaints made regarding the Dam, Chief Minister of the State constituted the committee comprising Secretary, Irrigation Department, Director of Gujarat Engineering Research Institute, Vadodara, Superintending Engineer, Quality Control Circle, Gandhinagar, Central Design Organisation, Gandhinagar, Superintending Engineer, Rajkot Irrigation Project Circle, Rajkot and other officers and it visited and inspected all the sites in presence of the villagers of Satapar village including petitioner no. 1 and the project was considered from the point of view of irrigation as also safety of the people living the down stream of the Dam. The project was found viable and construction was found very sound and in its

opinion the Dam was technically completely safe. His affidavit further shows that by virtue of the order of the Apex Court inspection regarding safety of the Dam was carried out by the Executive Engineer, Jamnagar Irrigation Division, Superintending Engineer, Rajkot Irrigation Circle, Rajkot and Dam was also visited by the Dam Safety Review Panel No. II comprising Eight Expert Members on 16.4.2002. Along with the affidavit, Mr. Dixit has produced the report of inspection on record. The details of the report shows that when the committee of experts included persons not less than Dr. Y.K. Murthy, Ex Chairman, CWC & Ex Consultant, World Bank as Chairman; Mr. GN Tandon, Ex CE, UP & Ex UN Consultant, Sri Lanka; Dr. Bharat Sinh, Ex Vice Chancellor, University of Roorkee; Dr. AS Arya, Professor Emeritus (Eq. Engg.) IIT, Roorkee; Mr. SM Husain, Director, CWC, New Delhi; Mr. GL Java, Ex. Executive Dir. SSNNL & Technical Advisor, SSNNL; Mr. DM Pancholi Retd. SE (Geo), CDO, Gujarat and Mr. VS Brahmhatt, CE & Director GERI, Gujarat, as members. This committee was specially constituted to examine the issues of Rehabilitation and Upgradation of damages due to earthquake of January, 2001 to the Dam of Dai-Minsar Irrigation Scheme. In the report, following notigs have

been made during the inspection:

“Spillway: The spillway is also provided with NOF dam on both the flanks. The structure had not been damaged during the earthquake.

Head Regulator: During the earthquake, no damage was noticed in the conduit and HR well.”

8. So far as the other sections of the Dams are concerned, at four locations, longitudinal cracks having 0.5:1 were observed. On the basis of the said inspection, recommendations have also been made which have been duly acted upon. Apart from it, the committee also considered various aspects relating to the Dam vis.a.vis adequacy of its different sections as well as soundness of these sections. By and large, the committee found that neither modification nor any strengthening was required to be made by retrofitting the wells etc. The report clearly shows that thorough checking/inspection was made of the whole Dam and the Dam was found absolutely safe and sound. Along with the affidavit, result of pre-monsoon inspection of various Dams during different years have been produced by the respondents. They are from the year 1999 up to 2005. The reports show that Dam is safe and sound.

9. In view of the aforesaid, it appears to us that the

grievance made by the petitioners is not well founded. When the inspection of the Dam is made by the high level committee and the experts periodically and its condition is found safe and sound, there is no reason for us to come to the conclusion that the quality of construction of Dam is poor and it is likely to result into a disaster. The Apex Court as well as this Court have also examined this issue earlier. We have no different conclusion to arrive at. Hence, this petition is dismissed. No order as to costs. Rule is discharged.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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